

January 16, 2002

The Honorable Larry D. Thompson
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Thompson:

I am writing with regard to a U.S. Department of Justice (“DOJ”) press release issued on Thursday, January 10, 2002, indicating that you will be leading the DOJ investigation into events surrounding the bankruptcy of Enron. This raises concerns that, as a former partner at King & Spalding, a law firm that has represented Enron, you may have a conflict of interest that would require you to recuse yourself from the investigation.

As you are probably aware, section 528 of title 28, United States Code, requires the Attorney General to promulgate rules and regulations that would require the disqualification of any officer or employee of the Justice Department “from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof.” Pursuant to this statute, the Attorney General promulgated regulations holding that DOJ employees shall be subject to, *inter alia*, part 2635 of title 5, Code of Federal Regulations. Section 2635.402 says employees shall be prohibited by the criminal law from participating in any matter in which he has a direct financial interest, while section 2635.501 provides that an employee who received an extraordinary payment from a former employer prior to his government service cannot participate in any matters involving that employer for two years without a waiver. These regulations may impact your participation in the Enron investigation because, as a law partner, you undoubtedly received compensation directly from your firm’s representation of Enron and currently may receive a pension – a direct financial interest – that is funded by that representation. If that is true, Federal regulations could require you to withdraw from the investigation.

Moreover, section 530B of title 28, United States Code, subjects DOJ attorneys to the ethical rules of the state in which they engage in their duties. As an employee for the

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Department in the District of Columbia, you are therefore bound to the D.C. Rules of Professional Conduct. District of Columbia Rule 1.7 provides that, without full disclosure and consent, a lawyer should not represent a client if the lawyer's "judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer's responsibilities to or interests in a third party or the lawyer's own financial, business, property, or personal interests." Once again, the fact that you received partnership benefits from – and may receive a pension from – a law firm that has represented Enron raises the possibility that you may not be able to represent adequately your client, the Justice Department, in that investigation.

Furthermore, the Justice Department has supplemented these regulations with internal guidelines for its prosecutors. More specifically, section 3-2170 of the DOJ U.S. Attorneys' Manual states that:

if a conflict of interest exists because a United States Attorney has a personal interest in the outcome of the matter or because he/she has or had a professional relationship with parties or counsel, or for other good cause, he/she should recuse himself/herself. The requirement of recusal does not arise in every instance in which he/she has had a professional relationship with parties or counsel, but only where a conflict of interest exists. Where there is the appearance of a conflict of interest, the United States Attorney should consider a recusal.

In the current situation, your status as a partner for Enron's lawyer indicates that you clearly had a professional relationship with Enron, a party to the investigation, and may need to recuse yourself from the investigation. At the very least, I hope you would agree that there is the appearance of a conflict of interest and you should consider a recusal.

Finally, the American Bar Association's Model Rules of Professional Conduct also provide guidance on when attorneys should abstain from representing clients in certain matters. For instance, Rule 1.7(b) states that "a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client, to a third person, or by the lawyer's own interests," unless the representation will not be adversely affected and the client consents. In this case, you may have a personal interest in the target of the investigation that may materially limit your ability to represent the Justice Department throughout the proceedings.

For these reasons, I am writing to inquire whether you have recused yourself from the Enron investigation or whether you are at least considering such a withdrawal. Also, if you have not recused yourself or have not considered doing so, please explain the rationale for your decision. Should you have any questions about this letter, please feel free to contact me or my staff at (202) 225-6906.

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Sincerely,

John Conyers, Jr.
Ranking Member

cc: The Honorable F. James Sensenbrenner, Jr.
Chairman
U.S. House Committee on the Judiciary